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INFORMATION SERIES

Obligation of Medical Professionals to Provide Interpreters

For Hospitals, Clinics, Doctor's Offices, Medical Facilities, Physicians and Medical Professionals

Preface and Disclaimer

The intent of this MCDHH information series summary is to address just one aspect of effective communication in medical situations. Deaf individuals, whose primary language is American Sign Language, may request that an ASL Interpreter be provided to ensure access to crucial or complex communications. Hospitals or medical professionals are legally obligated to provide and pay for the requested accommodation or provide an alternate method of communication access that is equally effective.

Information provided by MCDHH in any form is not intended to be inclusive, nor should it be considered legal advice or legally binding. MCDHH strongly suggests that you confer with a civil rights attorney before you choose to refuse to provide medical care or refuse to provide and pay for auxiliary aids and services, such as American Sign Language interpreters.

Applicable Laws:

Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112), as amended, mandates that “no otherwise qualified handicapped individual in the United States...shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”.

(The **Massachusetts Constitution** includes Article 114, adopted in 1980, containing the same language as mentioned above in Federal law of Section 504, and prohibits discrimination within the Commonwealth.)

Federal agencies and agencies that provide Federal financial assistance have their own set of Section 504 regulations for their programs and federal fund recipients such as **hospitals that receive Medicare (Part A) funding**. These regulations include provision of reasonable accommodation for disabled employees, program accessibility, **effective communication with people who have hearing or vision disabilities**, and accessible new construction and alterations to existing buildings. For example, the U.S. Department of Health and Welfare, Section F regulations implementing Section 504 include the following mandates:

Section 104.52(c). Emergency treatment for the hearing impaired. A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purposes of providing emergency health care.

Section 104.52(d). Auxiliary aids. (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question...(3) for the purposes of this paragraph, auxiliary aids may

include Braille and taped materials, interpreters, and other aids for persons with impaired hearing or vision.

The Americans with Disabilities Act, (ADA), Public Law 101-336 of the 101st Congress, was enacted on July 26th, 1990. The ADA prohibits discrimination on the basis of disability. It ensures equal opportunity for persons with disability in employment, State and local government services, places of public accommodation, commercial facilities and transportation. It also mandates the establishment of Text Telephone (TTY) relay services for access to telecommunications.

To be protected by the ADA, one must have a **disability (defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, including hearing)**, or has a history or record of such impairment, or is perceived by others as having such impairment, or have a relationship or association with an individual with a disability.

With respect to health care, it is the responsibility of the physician to communicate effectively with patients who have hearing, speech or visual impairments, unless an “undue burden” (significant difficulty or expense) or a fundamental alteration in the nature of the physician’s services would result. When the communication is more complex than would be effectively and clearly understood by both parties managing to write back and forth, and the patient usually prefers to communicate using sign language, then the physician is required to provide a qualified sign language interpreter, upon request. The physician MAY NOT pass on the costs of hiring this interpreter directly to the patient with the hearing impairment, but can spread the costs to all patients like any other overhead cost. The physician or medical facility needs to consider this expense as an operating cost to ensure compliance with Federal laws and to protect themselves from malpractice liabilities.

Some Disability Related Provisions in the Internal Revenue Code providing Tax Relief

Under *Section 190 of the Internal Revenue Code*, a business may deduct up to \$15,000.00 for qualified architectural and transportation barrier removal. *Section 44* is a Disabled Access Tax Credit available to eligible small businesses in the amount of 50% of their total costs for complying with the ADA (between \$250.00 and \$10,250.00). This includes the removal of communication barriers, and may be used to cover the costs of providing auxiliary aids and services such as qualified interpreters. *IRS publication # 907* explains the tax benefits associated with the costs of compliance or costs associated with the provision of auxiliary aids under the ADA.

ADA Title II, State and Local Government

As a medical professional, you may be employed in a hospital or medical facility operated by state or local government. Under Title II of the ADA, the **medical facility and the physician (government employee) must honor the deaf or hard of hearing patient’s communication preference if they have requested a sign language interpreter**, unless the physician can demonstrate that another equally effective means of communicating is available, or if the choice for communicating would fundamentally alter the nature of the physician’s service, or if an undue financial or administrative burden would result.

ADA Title III Places of Public Accommodation

A **pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment** are considered ‘places of public accommodation’ meaning a facility, operated by a private entity, whose operations effect commerce. Doctor’s offices and nursing homes are covered under Title III. Congregate care facilities, independent living centers and retirement

communities are covered by Title III, if, they provide significant enough level of social services that they can be considered social service establishments. Social services in this context include medical care, assistance with daily living activities, provision of meals, transportation, counseling and organized recreational activities.

Places of public accommodation must comply with non-discrimination requirements that prohibit exclusion, segregation and unequal treatment. There are specific requirements related to architectural standards of new construction and alterations of buildings, and to the removal of barriers in existing buildings where it is easy to do so without much difficulty or expense given the entity's resources. Reasonable modifications must be made to policies, practices, and procedures. ***Effective communication must be provided with people with hearing vision or speech disabilities.***

Under Subpart C – Specific Requirements, Sec.36.301(c) Eligibility Criteria Charges: A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the non-discriminatory treatment required by the Act or this part.

Sec.36.302(b)(1) Modifications in policies, practices or procedures. Specialties—General: A public accommodation may refer an individual with a disability to another public accommodation, if that individual is seeking, or requires, treatment or services outside of the referring public accommodation's area of specialization, and if, in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a disability who seeks or requires the same treatment or services.

Sec.36.303 Auxiliary aids and services. (a) General. A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of **auxiliary aids and services**...

Sec.36.303 (b) Examples. The term “auxiliary aids and services” includes—**(1) Qualified interpreters...** *(A qualified interpreter means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.)* notetakers, computer-aided transcription services (CART Providers), written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed captioned decoders, open and closed captioning, telecommunications devices for deaf persons (TTYs), videotext displays, or other effective methods of **making aurally delivered materials available to individuals with hearing impairments;**

Sec.36.303 (c) Effective communication. **A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.**

Massachusetts General Law MGL, c.221, Section 92A defines a “qualified interpreter” as a person skilled in sign language or oral interpretation and transliteration, has the ability to communicate accurately with a deaf or hearing-impaired person and is able to translate information to and from such hearing-impaired person, an interpreter shall be deemed qualified or intermediary as determined by the (MA) Commission for the Deaf and Hard of Hearing (MCDHH)...

Signing and interpreting are not the same thing. Being able to sign does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone signing and change their signed or finger spelled communication into spoken words. The interpreter must be able to interpret both receptively and expressively. In Massachusetts, the state Commission for the Deaf and Hard of Hearing (MCDHH) is the entity that determines if an interpreter is qualified, and provides for interpreter screening and certification.

Filing Complaints and Remedies for Section 504 and ADA violations

Individuals seeking to file **Section 504 complaints** with the appropriate federal agency are advised to contact the U.S. Department of Justice, DOJ, Civil Rights Division, 950 Pennsylvania Avenue, NW, Disability Rights Section, NYAV, Washington, DC 20530. DOJ toll free numbers are 800.514.0301 voice, 800.514.0383 TTY.

Please visit the website <http://www.usdoj.gov/crt/ada/adahom1.htm> for more information and assistance.

DOJ also handles complaints related to **Title II and Title III of the Americans with Disabilities Act**. The Department of Justice is **very serious and vigorous** in enforcing the ADA when a medical professional refuses to provide and pay for the costs of qualified interpreters upon request. The DOJ may refer cases to a DOJ sponsored mediation program. The DOJ's enforcement program goal is to increase voluntary compliance through technical assistance and negotiation. DOJ may bring a lawsuit where it has investigated and has been unable to resolve violations. Individuals with Title III complaints may file private lawsuits in Federal courts.

The DOJ Technical Assistance Manual (and 1994 Supplement) for Title III of the ADA

The DOJ operates a website and an ADA Information Hotline. DOJ's ADA specialists can help you understand pertinent provisions of the law, regulations and the technical assistance manuals. Excerpts from the DOJ ADA Title III Technical Assistance Manual (and 1994 Supplement) are included here:

III-4.1400 Surcharges. Although compliance may result in some additional cost, a public accommodation may not place a surcharge only on particular individuals with disabilities or groups of individuals with disabilities to cover these expenses.

ILLUSTRATION: In order to ensure effective communication with a deaf patient during an office visit, a doctor arranges for the services of a sign language interpreter. **The cost of the interpreter's services must be absorbed (paid) by the doctor.**

III-4.3200 Effective communication. In order to provide equal access, a public accommodation is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

ILLUSTRATION: A patient who is deaf brings his own sign language interpreter for an office visit without prior consultation and bills the physician for the cost of the interpreter. The physician is not obligated to comply with the unilateral determination by the patient that an interpreter is necessary. **The physician must be given an opportunity to consult with the patient and make an independent assessment of what type of auxiliary aid, if any, is necessary to ensure effective communication. If the patient believes that the physician's decision will not lead to effective communication, then the patient may**

challenge that decision under title III by initiating litigation or filing a complaint with the Department of Justice (see III-8.0000).

ILLUSTRATION: (H, an individual who is deaf, uses sign language as his primary means of communication and also communicates by writing.) H goes to his doctor for a bi-weekly check-up, during which the nurse records H's blood pressure and weight. **Exchanging notes and using gestures are likely to provide an effective means of communication at this type of checkup.**

BUT: Upon experiencing symptoms of a mild stroke, H returns to his doctor for a thorough examination and battery of tests and requests that an interpreter be provided. **H's doctor should arrange for the services of a qualified interpreter, as an interpreter is likely to be necessary for effective communication with H, given the length and complexity of the communication involved.**

On the tenth anniversary of the enactment of the ADA, the U.S. DOJ prepared a special edition of their **"Enforcing the ADA"** <http://www.usdoj.gov/crt/ada/10thrpt.pdf> listing these consent decrees:

A consent decree requiring the Maine Medical Center to provide qualified sign language interpreters, assistive listening devices and TTY's, captioned televisions and other similar auxiliary aids and services to persons who are deaf and hard of hearing. Maine Medical Center agreed to publish and distribute a new written hospital policy directing its employees to offer an interpreter whenever staff has any reason to believe a patient is deaf or hard of hearing. The interpreter is to be made available by the medical center as soon as possible and no later than one hour after the receipt of a request for an interpreter. The hospital also agreed to provide the same services including interpreters to deaf family members, relatives, companions, and friends who visit or accompany a patient. The hospital will require all of its clinical directors and department heads, as well as its supervisors, nurses, and other patient-contact personnel, to participate in mandatory and comprehensive in-service training regarding the proper use and role of interpreters and other communication needs of persons who are deaf or hard of hearing. Maine Medical Center also agreed to produce an educational video and distribute materials to all physicians with hospital privileges regarding the ADA rights of persons who are deaf and hard of hearing and to pay a civil penalty of \$10,000 and \$25,000 in damages to the plaintiff.

DOJ intervened in Connecticut Association of the Deaf v. Middlesex Memorial Hospital, **a lawsuit brought by the Office of Protection and Advocacy in Connecticut against 10 acute care hospitals for failing to provide sign language and oral interpreters for persons who are deaf or hard hearing.** In a consent decree joined by all the parties and 22 other acute care hospitals, the hospitals agreed to -- Set up a state-wide on-call system to provide interpreters 24 hours a day, seven days a week, for persons who are deaf or hard of hearing (the system will respond to most requests in urban areas within an hour, and in rural areas within one hour and fifteen minutes); Use sign language pictogram flash cards that will be developed by the Department of Justice to assist in communication when sign language interpreters are not available; Provide TTY's through-out the hospitals' public areas and in patient rooms, when requested; Install visual alarms where audible alarms are provided; Provide other auxiliary aids and services when necessary for effective communication, including computer assisted real-time transcription services, closed caption decoders for televisions, captioning of hospital-generated videos, qualified notetakers, assistive listening devices and systems, and written materials; and Train employees and volunteers about issues relating to communication with persons who are deaf or hard of hearing, including special training for emergency department personnel, psychiatric personnel, social workers, and other key personnel; offer training to all affiliated physicians; and pay \$333,000 in compensation to the named plaintiffs and individuals who filed complaints with the Department of Justice.

The U.S. Attorney's Office for the Southern District of Mississippi reached an agreement with Central Mississippi Medical Center resolving a complaint that the Center denied a request for an interpreter by a deaf individual wishing to attend child birth classes. The Center, located in Jackson, will institute a policy to ensure that individuals will receive the auxiliary aids and services needed for effective communication, including sign language interpreters. For courses or seminars offered by the Center, no more than 48 hours prior notice will be required to receive an interpreter. The Center will also provide ADA training to its employees and pay \$1,000 in damages to the complainant.

The Disability Rights Section and the U.S. Attorney for the District of Oregon intervened in and, at the same time, settled a lawsuit, Drew v. Merrill, challenging a Portland obstetrician's refusal to provide a sign language interpreter for medical consultations with a nondisabled, expectant mother and a deaf father. The suit was resolved through a consent decree reached through formal mediation under which Perinatal Associates agreed to institute a policy of providing sign language interpreters for deaf patients or their partners who are deaf to ensure effective communication; provide training for doctors and staff on the requirements of the ADA; and pay \$25,000 in damages to the plaintiffs.

Obtaining Sign Language Interpreters through MCDHH's Department of Interpreter and CART Referral Services

As a matter of policy and practice, the hospital or medical facility staff is responsible when appropriate for obtaining qualified interpreter services when appropriate.

For your convenience, MCDHH Referral Interpreter/CART Request forms are available on our website's download center of <http://www.state.ma.us/mcdhh/Download/Downloadcenter.htm>.

MCDHH operates an Interpreter Referral Service **during regular business hours of 8:45 AM to 5:00 PM.** During these weekday hours, **please call 1-800-882-1155 and please enter extension 1688** when prompted by the automated menu to be transferred to the voice mail of Referral's Intake Specialist. **TTY callers may call 1-800-530-7570** to leave their message on the main line TTY answering machines or through the relay service to the voice mail line. You may also call the **voice mail line for the Intake Specialist at 617-740-1688, or their TTY answering machine line of 617-740-1788** to convey the same information requested on the form. Office Voice mail and TTY messages are checked frequently and routed to the appropriate staff for follow-up.

In order to process a referral request, all of the necessary information must be completed in full. Completed forms may be faxed directly to the **Referral Department's Direct Fax Line of 617-740-1880.**

For regularly scheduled routine (non emergency) medical appointments, you may complete and mail the request forms in advance to **MCDHH Referral Dept, attn: Intake Specialist, Bayside Office Center, 150 Mount Vernon Street, fifth floor, Dorchester, MA 02125-3115.**

To obtain interpreters for deaf, oral deaf, late deafened and hard of hearing people for **Medical, mental health and legal emergencies, in the evening, on holidays and on weekends,** call the **After Hours Emergency Interpreter Service at 1-800-249-9949 (TTY/Voice)** to be connected to the After Hours Answering Service. MCDHH does have some Interpreters are "on call" for emergencies in evenings, on holidays and during weekends. For all other times, please use the main office numbers mentioned.